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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,095	01/16/2004	Michael D. Jenkins		2112

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James J. Ralabate
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Williamsville, NY 14221

EXAMINER

WEST, LEWIS G

ART UNIT PAPER NUMBER

2618

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,095

Applicant(s)

JENKINS, MICHAEL D.

Examiner

Lewis G. West

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Arguments

Applicant's arguments filed November 26, 2006 have been fully considered but they are not persuasive.

As stated in the previous action "messages are associated with a specific coordinate waypoint and are not associated with a specific subscriber within said network. (Col. 7 line 44-col. 8 line 4) The messages are sent to any mobile in the region of the waypoint meeting the category criteria, not to a specific subscriber." Therefore applicant has failed to address this cited portion of Smith, and has made only a general statement that the messages are associated with a subscriber, which is clearly not the case, as messages are sent to devices based on proximity to a waypoint when the devices are identified as falling within a particular category. The reference absolutely and clearly shows that the message is associated with the waypoint NOT THE SUBSCRIBER.

Claim Rejections - 35 USC § 112 1st Paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide for user selected coordinates, only that the

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coordinates currently determined by either the base station or the mobile as the present location are used. Therefore the limitations of “requires a user to specify at least a location associated with said message” is NEW MATTER and must be removed.

Claim Rejections - 35 USC § 112 2nd Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1 (and therefore claims 2-7 which incorporate claim 1), the language “device adapted to permit operations selected consisting” is grammatically indecipherable and unclear. It therefore makes the claim unclear, at the least with respect to the presence of alternative language.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith, Jr. et al (US 6,836,667 B1).

Regarding claim 1, Smith discloses a system for filtering messages associated with coordinate way points, the system comprising:

a mobile radio service provider network; (Col. 3 line 50-col. 4 line 5)

a plurality of subscriber devices enabled to function with said mobile radio service provider network; (Col. 3 lines 28-37)

at least one user interface inherent to said devices for facilitating two-way communication with said network, (Col. 3 line 56-col. 4 line 3; col. 8 lines 23-27)

said devices each possessing a unique identification number; (Col. 7 lines 58-67)

said device enabled to be set to a specific area of granularity within said provider network, (Col. 5 lines 8-15)

wherein messages outside said area of granularity would be not be receivable to said subscriber and messages within said area of granularity would be receivable to said subscriber, (Col. 8 lines 36-50)

wherein said messages are associated with a specific coordinate waypoint and are not associated with a specific subscriber within said network. (Col. 7 line 44- col. 8 line 4) The messages are sent to any mobile in the region of the waypoint meeting the category criteria, not to a specific subscriber, and further wherein said device adapted to permit operation selected consisting of capturing said device's own instant coordinate location (clearly shown in the reference as being carried out by GPS), leaving a message associate with a specific coordinate location within said network, and accessing a message posted at a specific coordinate location

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within said network at least due to said user device's physical proximity to said specific coordinate location, wherein leaving a message associated with a specific coordinate location requires said user to specify at least a location associated with said message but does not require an explicit recipient. (Col. 7 line 44-col. 8 line 44, the user leaves a message and associates it with the present location, which is a reasonable interpretation of this limitation with respect to applicant's specification)

Regarding claim 2, Smith discloses the system according to claim 1 wherein said messages are stored in a database (450) within said network. (Col. 8 line 5-27)

Regarding claim 3, Smith discloses the system according to claim 1 wherein said devices include personal computers, cell phones, personal digital assistants, user-supported computer. (wireless mobile unit 410 see col. 7 line 53-col. 8 line 4 wherein device 410 is described a telecommunications device operating in a cellular environment identifiable by a phone number, therefore a cellular phone). Given that limitations are claimed in the alternative, only one limitation must be met to read on the claim.

Regarding claim 4, Smith discloses the system according to claim 1 wherein said devices are located within said network by a positioning algorithm based on a method selected from the group consisting of triangulation of multiple signals, signal strengths of multiple signals, time difference of arrival of different signals, angle of arrival differences of different signals, GPS signals, and combinations thereof. (Col. 4 lines 23-44) Specifically GPS is recited and given that the limitations are claimed in the alternative, only one limitation must be met to read on the claim.

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Regarding claim 5, Smith discloses the system according to claim 2 wherein said mobile radio service provider network is divided up into a two-dimensional grid of grid points, said database associating a physical location of a user device with one of said grid points. (Col. 5 lines 29-41) A map is a two-dimensional representation of grid points for providing location.

Regarding claim 6, Smith discloses the system according to claim 2 wherein said mobile radio service provider network is divided up into a three-dimensional grid of grid points, said database associating a physical location of a user device with one of said grid points. (Col. 4 lines 23-44) Global Positioning Systems (GPS) uses three dimensional grid space (latitude, longitude and altitude) to provide a 3 dimensional coordinate space location.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, Jr. et al (US 6,836,667 B1) in view of Examiner's Official Notice.

Regarding claim 7, Smith discloses the system according to claim 1, but does not expressly disclose a type of multiple access used. Examiner takes Official notice that one of ordinary skill in the art at the time of the invention would have used at least one of the techniques listed as those listed cover all types used for wide area cellular networks. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have a

mobile radio service provider network that communicates using a protocol selected from the group consisting of CDMA, TDMA, FDMA, wide-band CDMA, as one or a combination of the techniques listed would have been implicit as at least one must be used to have more than one subscriber in a base station.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lewis G. West whose telephone number is 571-272-7859. The examiner can normally be reached on Monday-Friday 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on 571-272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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